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1	GREENFIRE LAW, PC	
2	Rachel Doughty, SBN 255904 J. Rae Lovko (SBN 208855)	
3	2748 Adeline Street, Suite A Berkeley, CA 94703 Telephone: (510) 900-9502 Facsimile: (510) 900-9502	
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5	Email: rdoughty@greenfirelaw.com rlovko@greenfirelaw.com	
6	Attorneys for Plaintiff	
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8	UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION	
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10	AC VOLL COW a 501 (a)(2) non profit	Case No.: 24-cv-04203-MMC
11	AS YOU SOW, a 501 (c)(3) non-profit corporation,	Case No.: 24-cv-04205-MMVC
12	Plaintiff,	DECLARATION OF DANIELLE FUGERE IN SUPPORT OF PLAINTIFF'S
13	v.	OPPOSITION TO DEFENDANT'S MOTION TO COMPEL ARBITRATION,
14	ETSY, INC., and DOES 1-20, inclusive	OR IN THE ALTERNATIVE, TRANSFER VENUE
15	Defendants,	VERGE
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- I, Danielle Fugere do declare and state:
- 1. If sworn as a witness, I could and would testify to my personal knowledge of the facts set forth herein.
- 2. I am the President and Chief Counsel for As You Sow ("AYS"), a position I have held since May 7, 2012. Prior to that, I served as Executive Director of the Environmental Law Foundation ("ELF") for three years, focusing on environmental health and water protection.
- 3. During my career, I estimate that I have been personally involved in hundreds of Proposition 65 matters—some settling out of court before a complaint was filed, others resolving after a complaint was filed. The vast majority of these cases were consumer product exposures.
- 4. AYS' Proposition 65 related work includes monitoring companies' compliance with Proposition 65's warning requirements, including monitoring the sale of skin lightening creams, chocolate products, detergents, herbal supplements, children's jewelry, sports equipment, electronic earbuds, and other consumer products.
- 5. In determining whether any given consumer product contains a known carcinogen or reproductive toxin, AYS has retrieved product testing results reported and/or conducted by public health agencies, nonprofits, and other organizations. At times, counsel that we have retained have also tested products to verify that they contain known carcinogens or reproductive toxins.
- 6. AYS previously sued Amazon.com, Inc. for selling mercury-containing skin whitening creams through its online website without required warnings. In *Lee v. Amazon, Inc.*, 76 Cal.App.5th 200 (a related case), the Court found that test indicating the presence of mercury in individual products at issue could be generalized to other units of that product or similar products. For example, in that case, Plaintiff alleged that Amazon was selling mercury-containing Monsepa cream. The mercury content of Monsepa was established through product testing conducted by the California Department of Public Health, the Department of Justice, and Plaintiff's counsel. While Monsepa cream was available for sale on Amazon's website, none of the tests of Monsepa creams were of products actually purchased from Amazon. Because mercury was found in testing of Monsepa skin whitening creams, the Court agreed that these tests were sufficient to establish the Monsepa cream available on Amazon's website contained mercury.

- 7. AYS thus understands that it may pursue Proposition 65 cases, where multiple tests have found a listed toxin in a product, without purchasing a unit of such product from Defendant and testing it.
- 8. AYS' Proposition 65 claims in the above-captioned case are brought as a private attorney general in the public interest. AYS has never purchased any skin whitening creams for use as a consumer product, does not claim to have been personally exposed to mercury as a result of ETSY's sales of mercury-containing skin whitening creams, and does not claim that ETSY's actions or statements associated with the sale of products to Greenfire are at issue. Rather, the Plaintiff's Proposition 65 claim focuses on exposures to California consumers, who are presumed to have purchased these products for their intended use.
- 9. Similarly, AYS' Unfair Competition Law claim, which also is based on ETSY's sale of mercury-containing skin whitening creams, alleges harm to important public interest rights.
- 10. I was first made aware of the ETSY Terms of Use associated with Greenfire Law, PC accounts on or about July 22, 2024 after Rachel Doughty, Esq. received ETSY's Motion to Compel Arbitration. As a cost of litigation, AYS compensates Greenfire Law, PC for the purchase of products from www.etsy.com for investigatory purposes.
- 11. Neither I nor AYS has directed or authorized Greenfire Law, PC to open up any ETSY accounts on our behalf, to enter into any arbitration agreement with ETSY on our behalf, to agree to this action being litigated in a forum outside of California, or to agree to New York law governing this action.

I make this declaration under penalty of perjury under the laws of the United States of America, executed this 15<sup>th</sup> day of August, 2024 in Oakland, California.

GREENFIRE LAW, PC

By: /s/ Danielle Fugere

DANIELLE FUGERE

Under N.D. Cal. Local Rule 5-1(i)(3), in lieu of a signature, I attest that I obtained approval, on August 15, 2024, from Danielle Fugere for the filing of this declaration. s/ Rae Lovko Rae Lovko